IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2005

Coram :

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE D.MURUGESAN

Writ Petition No.31508 of 2004

G.Rajendran Petitioner

v.

1. The Secretary to Government,
   H.R. & C.E. Department,
   Government of Tamilnadu,
   Secretariat,
   Fort St. George, Chennai 9.

2. The Commissioner,
   Hindu Religious & Charitable
   Endowment Board,
   Nungambakkam High Road,
   Chennai 600 034. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of writ of mandamaus directing the respondents to immediately implement the suggestions made in the petitioner's letter dated 11.09.2004 addressed to them, in accordance with the Hindu Agamas.

For Appellant : Mr.G.Rajendran,
Petitioner in person

For Respondents : Mr.G.Sukumaran, Spl. GP.

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ORDER

(Order of the Court was made by
the Honourable the Chief Justice)

This writ petition has been filed praying for a direction to correct the presently prevailing method of worship in Hindu temples in the State of Tamil Nadu. We are afraid we cannot issue any such direction under Article 226 of the Constitution.

2. It has been held by a Division Bench of this court in the case of Tamilnadu Industrial Investment Corporation Ltd. v. Millenium Business Solutions Pvt. Ltd., 2004 (5) SCC 689, that a writ petition can only lie when there is some statutory duty and there is a failure on the part of some official to discharge the statutory duty. The Division Bench relied on the decision of the Supreme Court in the case of Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh, AIR 1977 SC 2149 (vide para 15), wherein the Supreme Court observed,

> "There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. *(See Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer, AIR 1966 SC 334 : 1966 (1) SCR 120, Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College, AIR 1962 SC 1210, and Dr.Umakant Saran v. State of Bihar, AIR 1973 SC 964).* In the instant case, it has not been shown by respondent No.1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No.1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

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3. In view of the above decision, this writ petition is dismissed as not maintainable. However, it is open to the writ petitioner to file a civil suit. Consequently, the WPMP. No.38199 of 2004 is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copies to

1. The Secretary to Government,
   H.R. & C.E. Department,
   Government of Tamilnadu,
   Secretariat,
   Fort St. George, Chennai 9.

2. The Commissioner,
   Hindu Religious & Charitable
   Endowment Board,
   Nungambakkam High Road,
   Chennai 600 034.

Two ccs to M.S.Rajendran, Party in person, SR.117.

One cc to Govt. Pleader , High Court, Madras. SR.186.

WP.31508 of 2004

KLT [co]

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